

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**In re:**

<b>SMITH DEVELOPMENT, INC.</b>	)	<b>Bankruptcy Case No: 09-10078</b>
	)	
<b>Debtor</b>	)	<b>Chapter 7</b>
	)	
_____	)	

**ORDER DENYING MOTION TO REOPEN CASE  
FOR FURTHER RELIEF OF DEBTOR**

On July 25, 2019, Debtor Smith Development (“Debtor”) filed a Motion to Reopen Case and Obtain Relief to Proceed with Legal Malpractice Action Against Attorney Hired by Chapter 7 Trustee (Docket No. 220). On October 1, 2019, Parties-In-Interest, Martin Conway and Pesner, Kawamoto, Conway, P.C. (collectively, “Conway”), filed their Opposition to Smith Development, Inc.’s motion to reopen (Docket No. 224).

The Court held a hearing on October 8, 2019 on the Debtor’s motion. John Lopatto appeared on behalf of Debtor, and Robert Jackson Martin appeared on behalf of Conway. Upon review of the pleadings, arguments of counsel and for the reasons stated on the record, this Court finds as follows:

WHEREAS, Smith’s Motion was filed over seven years after this case, Bankruptcy Case No: 09-10078, was originally closed;

WHEREAS the causes of action identified in Count I (Breach of the Standard of Care in Filing Chapter 11 Plans and in Conversion to Chapter 7) and Count II (Breach of the Standard of Care in Failure to Recover Adequate Damages from Defaulting Purchasers of Land and Custom Home) in Debtor’s April 11, 2019 state-court complaint filed in the Circuit Court for the City of

Alexandria (CL19001737) are barred by the statute of limitations and, thus, are futile; it is hereby **ORDERED** that:

1. Smith's Motion (Docket No. 220) is **DENIED**.
2. Debtor's Motion of Debtor Smith Development, Inc., and Party in Interest M. Kevin Smith to Order Trustee and Estate to Abandon Causes of Action Against Attorneys Hired to File Adversary Actions is **DENIED AS MOOT**.
3. Debtor is advised that there are 14 days within which to note an appeal of this Order.
4. The clerk shall mail copies of this Order or give electronic notice of its entry to the parties listed below.

Date: Oct 24 2019  
Alexandria, Virginia

/s/ Klinette H. Kindred  
Klinette H. Kindred  
United States Bankruptcy Judge

Entered on Docket: October 24, 2019

**Copies electronically to:**

John Lopatto  
Robert Jackson Martin, IV  
Danny M. Howell  
Martin Conway